

JAN 02 2007

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of:

Friends of John Hostettler and Tim

Deisher, as treasurer

John Hostettler

American General Corporation PAC and

Vincent E. Cantwell, as treasurer

Posey County Republican Party and Greg

Newman, as treasurer, and James

Kohlmeyer, as chairman

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GENERAL COUNSEL'S REPORT #2

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I. ACTIONS RECOMMENDED

Take no further action against the American General Corporation PAC and the Posey County Republican Party; find no reason to believe that John Hostettler, Friends of John Hostettler, or James Kohlmeyer violated 2 U.S.C. § 441f; and close the file.

II. BACKGROUND

A complaint asserted that the American General Corporation PAC ("AGCPAC") made a contribution to John Hostettler in the name of the Posey County Republican Party ("the Posey Party"). Hostettler, a Congressman from the Eighth District of Indiana, does not accept PAC contributions, and the complaint alleged that AGCPAC funneled a contribution through the Posey Party. The First General Counsel's Report noted five indications that the parties may have made a contribution in the name of another:

- There was a correlation in the timing and amount of the contributions at issue: nine days after AGCPAC made a \$1,000 contribution to the Posey Party, the Posey Party made a \$1,000 contribution to Hostettler;

- Correspondence between AGCPAC and the Posey Party mentioned contributions to Hostettler;
- AGCPAC initially reported its contribution as to "John Hostettler [sic] Posey County Republicans";
- A newspaper article quoted the chairman of the Posey Party making a statement that seemed akin to an admission that PAC contributions had been passed on to Hostettler; and
- AGCPAC had a motive to make a contribution in the name of another because Hostettler has a policy of refusing to accept PAC contributions.

The Commission, on June 19, 2001, found reason to believe that AGCPAC and the Posey Party violated 2 U.S.C. § 441f. The Commission made no findings with respect to John Hostettler and his committee, Friends of John Hostettler ("the Hostettler Committee"), because there was no indication that they knew or should have known about the alleged prohibited contribution. Likewise, the Commission made no findings against James Kohlmeyer, chairman of the Posey Party, because his involvement in the alleged transaction was also unclear.

Both AGCPAC and the Posey Party submitted written responses to the Commission's reason to believe findings. *See* Attachments 1 and 2. These responses, which provided factual information not contained in their responses to the complaint, provide an alternative explanation to many of the factual circumstances that led the Commission to open an investigation. In light of this new information, as well as the limited amount of funds involved, this Office recommends that the Commission exercise its discretion and take no further action against the respondents in this matter.

III. SUMMARY OF INVESTIGATION

A. AGCPAC

In its response to the Commission's reason to believe findings, AGCPAC provided more information on the circumstances surrounding its contribution to the Posey Party. The American

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1 General Finance Co. ("AGF"), a subsidiary of American General Corp., is headquartered in
2 Evansville, Indiana. Attachment 1, pg. 2. In March 2000, Stephen Watson, senior vice president
3 of government and industry relations at American General Corp. in New York, traveled to AGF
4 headquarters in Evansville. Watson, who grew up in Evansville and previously lived there 44
5 years, traveled to AGF to help orient a new employee, Brett Ashton. Attachment 1, pg. 12, at
6 ¶¶4-5.

7 While in Evansville, Watson was invited to attend a fundraiser for Congressman John
8 Hostettler, whose district encompasses AGF headquarters. *Id.* at ¶6. Watson thought the
9 fundraiser would be a good opportunity for Brett Ashton and himself to meet with local political
10 and business leaders. *Id.* Additionally, Watson's son was applying to West Point, and Watson
11 hoped to inquire about Hostettler's willingness to support his son's application. *Id.* at ¶7.

12 At the fundraiser, Watson met Bill Gillenwater. Watson understood Gillenwater to be a
13 senior official in the Posey Party and involved with Hostettler's campaign committee. *Id.*, pg.
14 13, at ¶8. Gillenwater suggested to Watson that the Posey Party would welcome a contribution
15 from AGCPAC. *Id.* According to his affidavit, Watson believed that contributing to the Posey
16 Party would enhance the company's image with the Republican Party in southern Indiana. *Id.* at
17 ¶¶10, 12. Accordingly, Watson asked Ashton to make a formal written request to AGCPAC's
18 board of directors, who must approve all contributions. Watson also states that neither he,
19 Ashton, nor Gillenwater ever discussed or considered that the contribution to the Posey Party
20 would be forwarded to Hostettler. *Id.* at ¶¶11, 15.

21 On March 24, 2000, AGCPAC's board of directors approved Ashton's request that a
22 contribution be made to the Posey Party. *Id.* at ¶12. That same day, Watson mailed Gillenwater

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1 a \$500 check made out to "Hostettler for Congress." *Id.* at ¶13. Watson states that the
2 contribution to Hostettler covered the requested donation of \$250 per person for his and Ashton's
3 attendance at Hostettler's fundraiser. Watson included a letter to Gillenwater with his
4 contribution, noting that a check to the Posey Party from AGCPAC would be forthcoming. *Id.* at
5 ¶14. This note was included in the Posey Party's response to the complaint and reproduced in
6 the First General Counsel's Report.

7 AGCPAC's former treasurer, Jefferson D. Taylor, states in an affidavit that he processed
8 Ashton's contribution request to the Posey Party.¹ Attachment 1, pg. 10, at ¶¶2-3. Taylor further
9 claims that he was not aware of Watson's involvement in the contribution. *Id.* According to
10 Taylor, a close examination of Ashton's request "resulted in some confusion" because Ashton
11 noted Hostettler's name. *Id.* at ¶5. Nonetheless, Taylor processed the check without seeking
12 clarification because he knew Ashton was a new employee and also that Ashton was
13 "overwhelmed with his personal and professional responsibilities."² *Id.* Additionally, Taylor
14 states that the request clearly noted that the check should be made out to the Posey Party.

15 Taylor states that when he used AGCPAC's software program to complete the
16 disbursement to the Posey Party, the program automatically assigned the contribution to
17 Hostettler based on the zip code of the Posey Party. *Id.* at ¶6. Although Taylor claims he usually
18 overrode this default, he did not in this case because he "felt it was better to provide too much,
19 rather than too little, information." *Id.* Thus, AGCPAC's April 2000 monthly disclosure report
20 indicated that the contribution was to both Hostettler and the Posey Party. *Id.* When a reporter

¹ Vincent E. Cantwell has recently replaced Jefferson Taylor as treasurer of AGCPAC.

² Around that time, Ashton's wife was hospitalized for five weeks due to complications from her pregnancy with triplets.

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later questioned the notation to Hostettler, Taylor removed it to "mitigate any confusion." *Id.* at ¶7. Finally, Taylor states that until he spoke with the reporter, he was not even aware that Hostettler refused to accept PAC contributions. *Id.* at ¶8.

B. The Posey Party

The Posey Party submitted a brief written response to the Commission's findings and included copies of its check register and bank statements. See Attachment 2. This Office also interviewed Bill Gillenwater and James Kohlmeyer, officials of the Posey Party.

Bill Gillenwater's account of the circumstances surrounding AGCPAC's contribution to the Posey Party is very similar to that of Stephen Watson. Gillenwater, who is finance chairman of the Posey Party, told this Office that he met Watson at a fundraiser for Hostettler in March 2000. At that fundraiser, Gillenwater remembers Watson mentioning his son's application to West Point and inquiring whether Hostettler would review the application.³ The only difference between Gillenwater's and Watson's account is that Gillenwater stated that Watson and Ashton were guests at the Hostettler fundraiser, meaning that they did not pay to attend. Thus, when Gillenwater received the \$500 check from Watson to the Hostettler Committee, Gillenwater thought that it was a purely personal contribution, not a payment for the fundraiser.

Gillenwater confirmed that he works for the Hostettler Committee as a fundraiser, though he said he has no official title. He said that he wears many hats, and he frequently solicits people to contribute to the many causes that he is involved with. Thus, he said that there was nothing unusual about his soliciting AGCPAC to contribute to the Posey Party. Gillenwater further stated that there was "no agreement whatsoever" to pass AGCPAC's money to Hostettler.

³ Gillenwater also said that he spoke with Watson four to six times after the fundraiser about the West Point application and that Hostettler eventually declined to assist with the matter.

1 Gillenwater also repeated the Posey Party's earlier claim that it has always contributed
2 \$1,000 to Hostettler in an election year, and he noted that the 2000 campaign was especially
3 competitive. Finally, Gillenwater said that the Posey Party did not receive the AGCPAC check
4 until well after the Posey Party contributed to the Hostettler Committee. Gillenwater noted that
5 AGCPAC did not correctly address its contribution to the Posey Party and thus the check was not
6 received until weeks after it was mailed.

7 AGCPAC mailed its contribution to the Posey Party using the address of Bob Ossenberg.
8 Although Ossenberg is not an official of the Posey Party, he had previously interacted with
9 AGCPAC through the neighboring Vanderburgh County Republican Party. Ossenberg told this
10 Office that he was not expecting to receive AGCPAC's check for the Posey Party and that upon
11 receiving it, he forwarded it to Bill Gillenwater. Ossenberg also explained that he is friends with
12 Steve Watson—they both grew up in Evansville—and speculated that Watson likely did not
13 know Gillenwater's address.⁴

14 Finally, this Office interviewed James Kohlmeyer, whose quotations in a newspaper
15 article formed a basis for the complaint. Kohlmeyer, who is the chairman of the Posey Party,
16 allegedly told a reporter that: "We've done this before—and it's perfectly legal—they (donors)
17 donate to us, and we can donate \$1,000 to John Hostettler. They earmarked it for John, I guess."
18 Kohlmeyer reiterated to this Office that the newspaper "completely misquoted" him.
19 Additionally, Kohlmeyer said he had no direct knowledge as to the circumstances surrounding
20 the contribution from AGCPAC and that he did not know any AGCPAC officials. Rather, he
21 said that Bill Gillenwater was the one who solicited and received the contribution.

⁴ It is unclear whether Watson also mistakenly sent his personal contribution to Ossenberg's address. AGCPAC's response does not mention Ossenberg or explain how it obtained the address it used for the Posey Party.

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IV. ANALYSIS

In their initial responses to the complaint, neither AGCPAC nor the Posey Party explicitly denied making a contribution in the name of another. Now, however, all parties unequivocally state that there was no discussion or intention that a contribution would be passed on to the Hostettler Committee. The parties' assertions are generally supported by documentation and other corroborating evidence. The following discussion reevaluates the factors that led to the Commission's findings in light of the new information gathered during this Office's investigation.

A. Correlation of the Timing and Amount of Contributions

The First General Counsel's Report noted that only nine days elapsed between AGCPAC's \$1,000 contribution to the Posey Party and the Posey Party's \$1,000 contribution to the Hostettler Committee: the check from AGCPAC to the Posey Party was dated March 28, 2000, and the check from the Posey Party to the Hostettler Committee was dated April 6, 2000. However, the Posey Party has now provided documentation that it did not receive and deposit AGCPAC's check until *after* it contributed to the Hostettler Committee.

Almost one month elapsed between when AGCPAC wrote its check to the Posey Party and when the Posey Party received that check. The reason for this delay is because AGCPAC mailed the check to the address of Bob Ossenberg, a friend of Watson's who has been active in the local Republican party of a neighboring county. Ossenberg, who is not an official of the Posey Party, forwarded the check to Gillenwater. AGCPAC likely is not aware that it used an incorrect address for the Posey Party: the treasurer of AGCPAC asserts that the check was

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1 mailed to the Posey Party; Ossenberg is not mentioned in AGCPAC's response; and AGCPAC's
2 amended disclosure report still lists Ossenberg's address for the Posey Party.

3 Gillenwater stated that he received AGCPAC's check on April 26, 2000, and he
4 deposited it in the Posey Party's bank account the same day. The Posey Party's check register,
5 bank deposit slip, and bank statements all indicate that the check was indeed deposited on April
6 26, 2000.⁵ Attachment 2, pp. 3-5. Thus, the Posey Party did not deposit AGCPAC's check until
7 nearly three weeks after it wrote a check to the Hostettler Committee. Therefore, the correlation
8 in the timing of the contributions between AGCPAC and the Posey Party is different from what
9 the complaint indicated.

10 The Posey Party has also repeatedly stated that its \$1,000 contribution to Hostettler was
11 routine: it has contributed \$1,000 to Hostettler during each election year for the past six years.
12 However, as this Office noted in the First General Counsel's Report, the 2000 election was the
13 first time that the Posey Party contributed during the primary election. In previous years, the
14 contributions came later in the campaign. According to Gillenwater, the reason for the early
15 contribution was the competitiveness of the 2000 election; the Posey Party did not want
16 Hostettler's opponent to gain an early fundraising edge. News accounts confirm that Hostettler
17 faced a "tough reelection" bid.⁶ Thus, the proffered explanation for the Posey Party's early
18 contribution is plausible.

⁵ Bank statements also show that the Posey Party has maintained an account balance of over \$1,000 since April 2000, which supports the Posey Party's previous assertion that it has not spent AGCPAC's contribution.

⁶ See "Vulnerable Incumbents Generally Favor PNTR," *National Journal's House Race Hotline*, Mar. 28, 2000. Although Hostettler was unchallenged in the primary election, he was reelected in the general election with only 52.7% of the vote.

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B. Correspondence between AGCPAC and the Posey Party

The First General Counsel's Report discussed a letter that Stephen Watson, the senior vice president of American General Corp., sent to Bill Gillenwater. The handwritten letter, which the Posey Party attached to its response to the complaint, was on American General Corp. letterhead. In this letter, Watson refers to his enclosed "personal contribution to the 'Hostettler for Congress' fund" and states that a contribution from AGCPAC to the Posey Party will be arriving within 10 days.⁷ The First General Counsel's Report concluded that this correspondence demonstrated that AGCPAC was aware that the Posey Party handled contributions that directly or indirectly supported Hostettler.

Both Gillenwater and Watson have explained that the letter was meant to convey that the AGCPAC contribution to the Posey Party was separate from Watson's personal contribution to the Hostettler Committee. This assertion is made more credible by Watson's hometown connection and his son's pending West Point application, both of which could be viewed as giving Watson a personal interest in supporting Hostettler. Moreover, Gillenwater appears to have two separate roles: one in the Posey Party, the other in the Hostettler Committee. Therefore, this Office is satisfied that Watson's letter to Gillenwater reflects two separate contributions.

C. AGCPAC's April 2000 Monthly Report

In the First General Counsel's Report, this Office noted that AGCPAC initially reported

⁷ In the First General Counsel's Report, this Office stated in a footnote that a search of disclosure reports indicated no record of a contribution by Stephen Watson to the Hostettler Committee. In actuality, the Hostettler Committee did report receiving a \$500 contribution from Watson on March 25, 2000. The Hostettler Committee's report lists an illegible first initial for Watson, which explains why the FEC disclosure system recorded "Z. Stephen Watson" as the contributor.

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1 its contribution to the Posey Party as to "John Hostetler [sic] Posey County Republicans."

2 Although AGCPAC later amended its report to delete the reference to Hostettler, this amendment
3 did not occur until October, after a newspaper article was published that questioned the
4 transaction. Thus, the amendment deleting the reference to Hostettler appeared to have been an
5 attempt by AGCPAC to cover its tracks.

6 Jefferson Taylor, the treasurer of AGCPAC who processed the contribution, has
7 explained that one reason Hostettler's name first appeared on the report is that the employee
8 requesting the contribution, Brett Ashton, wrote Hostettler's name on the contribution request.
9 Attachment 1, pg. 10, at ¶5. Taylor also stated that the software he used to report AGCPAC's
10 disbursements automatically inserted Hostettler's name into the report because the zip code of
11 the Posey Party is in Hostettler's district.⁸ *Id.* at ¶6.

12 AGCPAC's reason for Hostettler's name being listed in its disclosure report does not
13 entirely explain why Ashton wrote Hostettler's name on the contribution request in the first
14 instance. Although Ashton may have referenced Hostettler simply because Hostettler
15 represented Posey County, the reference to Hostettler was clearly intentional and may denote just
16 the type of connection that led the Commission to find reason to believe in this matter.⁹
17 Nonetheless, viewed in light of all the circumstances discussed in this Report, the reference to
18 Hostettler does not merit further investigation.

⁸ This Office still has questions about the assertion that the software automatically inserted Hostettler's name; i.e., how does the software distinguish between incumbents and challengers simply by zip code? Nonetheless, AGCPAC has now admitted that the mention of Hostettler's name was not purely the result of the software—Ashton wrote it on the contribution request and the treasurer made a conscious decision not to override the default.

⁹ This Office contacted AGCPAC's counsel for clarification, and he stated that he had spoken with Ashton and that Ashton's account is reflected in the affidavits of Taylor and Watson. AGCPAC's counsel stated that Ashton wrote Hostettler's name on the request because Hostettler represented Posey County and because the request form was rather complicated.

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D. Newspaper Quotations

The complaint attached a newspaper article from the *Evansville Courier & Press* in which James Kohlmeyer, chairman of the Posey Party, is quoted as saying: "We've done this before—and it's perfectly legal—they (donors) donate to us, and we can donate \$1,000 to John Hostettler. They earmarked it for John, I guess." When the journalist reminded Kohlmeyer that Hostettler does not accept PAC contributions, Kohlmeyer responded, "Well, John doesn't know it came from them. There's no way he would know it came from American General." The First General Counsel's Report noted that Kohlmeyer has attempted to repudiate those remarks, saying that the comments attributed to him were not what he "remember[ed] saying or what [he] intended to say."

In an interview with this Office, Kohlmeyer reiterated that the newspaper "completely misquoted" him. Additionally, as all parties have confirmed, Kohlmeyer was not involved in the transactions. Thus, Kohlmeyer's comments to the newspaper may have been an impulsive attempt to answer the reporter's questions in a manner that made the Posey Party appear to be a strong supporter of Hostettler. Regardless, Kohlmeyer's alleged statements carry even less weight now, as he did not have personal knowledge of the circumstances surrounding AGCPAC's contribution to the Posey Party.¹⁰ Moreover, even in the absence of challenges to its accuracy, this Office would not rely on a newspaper quotation as a basis for proceeding to the probable cause stage of the enforcement process.

¹⁰ Because Kohlmeyer was quoted as saying that the Posey Party has "done this before," this Office looked at disclosure records of other Indiana Republicans to see if the Posey Party had made other federal contributions. This Office found no such contributions. Accordingly, there does not appear to be any pattern of the Posey Party funneling contributions to federal candidates.

E. AGCPAC's Motives

The First General Counsel's Report noted that AGCPAC had a motive to make a contribution to Hostettler in the name of another: Hostettler had a longstanding policy of rejecting PAC contributions. However, this Office's investigation has not produced evidence that AGCPAC acted on this apparent motive. Disclosure records confirm that AGCPAC has previously contributed to other local parties and candidates in southwestern Indiana. Further, American General Finance Co. is headquartered near Posey County and employs nearly 1,000 people there. Thus, AGCPAC appears to have had a strong motive to contribute to the Posey Party regardless of whether such funds might be used to support Hostettler.

F. Conclusion

In sum, this Office's investigation has not produced additional evidence to support the allegation that AGCPAC made a contribution to the Hostettler Committee in the name of the Posey Party. The parties have provided plausible, alternative explanations to most of the factors that led to the Commission's findings. Considering that this matter involves only \$1,000, and considering that further investigation will likely not yield additional evidence of a violation, this Office believes that the Commission should no longer devote its resources to this matter. Therefore, this Office recommends that the Commission exercise its discretion and take no further action against the American General Corp. PAC and Vincent E. Cantwell, as treasurer, and the Posey County Republican Party and Greg Newman, as treasurer.

The Commission previously made no findings with respect to John Hostettler, his committee, or James Kohlmeyer, the chairman of the Posey Party. No evidence has arisen that implicates these parties in a scheme to make contributions in the name of another. Therefore,

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this Office recommends that the Commission find no reason to believe that John Hostettler, Friends of John Hostettler and Tim Deisher, as treasurer, or James Kohlmeyer, as chairman of the Posey County Republican Party, violated 2 U.S.C. § 441f.

V. RECOMMENDATIONS

1. Take no further action against the American General Corp. PAC and Vincent E. Cantwell, as treasurer;
2. Take no further action against the Posey County Republican Party and Greg Newman, as treasurer;
3. Find no reason to believe that John Hostettler violated 2 U.S.C. § 441f;
4. Find no reason to believe that Friends of John Hostettler and Tim Deisher, as treasurer, violated 2 U.S.C. § 441f;
5. Find no reason to believe that James Kohlmeyer, as chairman of the Posey County Republican Party, violated 2 U.S.C. § 441f;
6. Approve the appropriate letters; and
7. Close the file.

Lawrence H. Norton
General Counsel

12/28/01
Date

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Acting Associate General Counsel

Attachments:

1. AGCPAC Response
2. Posey Party Response

Staff Assigned: Brant Levine

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